

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

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United States of America, )  
 ) File No. 17-CR-157  
 ) (MJD/HB)  
Plaintiff, )  
 )  
vs. ) St. Paul, Minnesota  
 ) September 21, 2017  
Todd Seaver Knutson, ) 10:26 a.m.  
 )  
Defendant. )  
-----

BEFORE THE HONORABLE HILDY BOWBEER  
UNITED STATES DISTRICT COURT MAGISTRATE JUDGE

**(PRETRIAL MOTIONS HEARING)**

APPEARANCES

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1 9

2 9

3 9

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6 13

**P R O C E E D I N G S**

**IN OPEN COURT**

(Defendant present)

THE COURT: Thank you for your patience. And thank you for running up from your last hearing.

I am Magistrate Judge Hildy Bowbeer and we are in court this morning for a hearing on a number of motions filed in the matter of United States of America vs. Todd Seaver Knutson. This is criminal matter number 17-157.

Let me start by getting appearances first on behalf of the United States.

MR. DUNNE: Andrew Dunne, D-u-n-n-e, on behalf of the United States. Good morning, Your Honor.

THE COURT: Good morning. And on behalf of Mr. Knutson?

MR. BRINK: John C. Brink for Mr. Knutson.

THE COURT: And the record will reflect that Mr. Knutson is in court with us this morning as well.

What I want to do is go first through the list of motions that I have in front of me to make sure that my inventory, if you will, is complete and then I'll ask you about whether there are any updates to those, perhaps anything that's been narrowed or eliminated because of further consideration, and then we'll go from there to any testimony that may need to be required in connection with

1 the dispositive motions.

2 So first what I have is the government's motion,  
3 Docket No. 25, for discovery pursuant to Federal Rules of  
4 Criminal Procedure 16(b), 12.1, 12.2, and 26.2. Docket  
5 No. 27 -- and actually, all of the rest of these are  
6 Defendant Knutson's motions. Docket No. 27 is motion for  
7 disclosure of any evidence that is exculpatory, mitigates  
8 punishment, or is relevant to the impeachment of witnesses;  
9 28, motion for disclosure of the identity of all informants  
10 who were witnesses to or participants in the crimes charged  
11 in the indictment; 29, motion for disclosure of any  
12 information provided by informants or trial witnesses, their  
13 criminal records, and the incentives provided to them to  
14 provide information or testimony; No. 30, motion for early  
15 compliance with the Federal Rules of Criminal Procedure and  
16 the Jencks Act; 31, motion to preserve and for disclosure of  
17 copies of any handwritten or tape-recorded notes of  
18 interviews, debriefings, or surveillances; 32, motion for  
19 the production of any informants whose identity is disclosed  
20 for the purpose of conducting pretrial interviews; 33,  
21 motion for disclosure of all grand jury testimony relating  
22 to this investigation. And I will just note for the record  
23 that the docket numbers on the motions I've just finished  
24 listing are the ones that are nondispositive motions.

25 Going on to the dispositive motions, Docket

1 No. 34, Defendant Knutson's motion to suppress all  
2 electronic surveillance evidence and any evidence derived  
3 therefrom; 35, motion to suppress any evidence obtained as a  
4 result of illegal searches or seizures; 36, motion to  
5 suppress any evidence obtained as a result of any illegal  
6 interrogation; 37, motion to suppress any evidence obtained  
7 as a result of any illegal identification procedures; and  
8 45, motion to suppress search warrant evidence and request  
9 for an evidentiary Franks hearing.

10 Those are the motions I have in front of me that  
11 are dispositive in nature. So let me ask first: Have I  
12 left anything out? Did any of you think there were other  
13 motions on the calendar for today that I did not identify?

14 MR. DUNNE: The only omission, Your Honor, and  
15 it's not a motion, but Mr. Brink filed, and I think it's  
16 Docket No. 26, a demand for discovery and it was really a  
17 letter to the government with the demand. It was filed on  
18 ECF and I have replied to that demand in our responsive  
19 papers, but it isn't a motion.

20 THE COURT: Got it. The Court notes that and  
21 notes that you've represented that you have responded to it.

22 Mr. Brink, anything that you noted that I left  
23 out?

24 MR. BRINK: Not from Mr. Knutson, Your Honor.  
25 Thank you.

1 THE COURT: All right. Thank you. Now, with  
2 respect to the nondispositive motions, I have obviously  
3 reviewed both the motions and the responses filed. Are  
4 there any updates to those responses by way of results of  
5 meeting and conferring or anything else?

6 MR. BRINK: Not from Mr. Knutson, Your Honor.

7 MR. DUNNE: Not on behalf of the United States.

8 THE COURT: All right. Then I will -- and did  
9 either of you want to add anything in terms of argument on  
10 those motions?

11 MR. BRINK: No, Your Honor. Thank you.

12 MR. DUNNE: No, Your Honor.

13 THE COURT: All right. Then I will take those  
14 motions under advisement and will issue a ruling in due  
15 course.

16 Let's turn, then, to the dispositive motions, 34,  
17 35, 36, 37, and 45. I understand, Mr. Dunne, that you have  
18 at least one witness with respect to those motions, but let  
19 me ask first: Is there anything by way of update or  
20 narrowing of the issues that the two of you have discussed  
21 in the meantime?

22 MR. DUNNE: A little bit, Your Honor. I will  
23 point the Court's attention to our response to the  
24 defendant's pretrial suppression motions, page 9 and it's  
25 number 3(b) --

1 THE COURT: Um-hmm.

2 MR. DUNNE: -- and page 8, 3(a) is primarily what  
3 I will want -- page 8, numeral 3(a), and they were post  
4 arrest statements made by Mr. Knutson on June 8th at the  
5 lockup in the U.S. Marshal's holding cell area. I have  
6 discussed with Mr. Brink and we are representing to the  
7 Court that it is not the intention of the United States to  
8 introduce any of those statements at trial.

9 THE COURT: All right. In light of that,  
10 Mr. Brink, my inclination would be to deny that part of your  
11 motion as moot.

12 MR. BRINK: I think that would be appropriate.

13 THE COURT: All right. Very well. Or I suppose  
14 to recommend that Judge Davis deny that part of the motion  
15 as moot.

16 All right. Thank you for that clarification.  
17 Anything further by way of narrowing or clarification or  
18 issues that are now mooted by virtue of your conversations  
19 among yourselves?

20 MR. DUNNE: No, Your Honor.

21 THE COURT: Nothing further?

22 MR. BRINK: No, Your Honor. Thank you.

23 THE COURT: Then I know, Mr. Dunne, as I say,  
24 you've got at least one witness, but Mr. Brink, let me ask  
25 whether you wanted to give me any further overview beyond

1       what's in your papers before we turn to any evidence-taking  
2       today.

3               MR. BRINK: No, Your Honor. We can go right to  
4       it.

5               THE COURT: All right. Very well. Mr. Dunne,  
6       please call your first witness.

7               MR. DUNNE: Your Honor, what I want to do is just  
8       with regards to the motion to suppress evidence as a result  
9       of any search and seizure, the United States has four  
10      exhibits and they are the four search warrants.

11              Exhibit 1 is the Ramsey County District Court  
12      Application for Search Warrant and Search Warrant for  
13      890 Arkwright Street and Mr. Knutson.

14              Exhibit Number 2 is the Ramsey County District  
15      Court Application for Search Warrant and Search Warrant for  
16      the DNA buccal swab of Mr. Knutson.

17              Exhibit 3 is the Ramsey County District Court  
18      Application for Search Warrant and Search Warrant for the  
19      Samsung smart phone.

20              And Exhibit 4 is the United States District Court  
21      Application for Search Warrant, Affidavit of Matthew Parker,  
22      and Search and Seizure Warrant for the Bunker Hills security  
23      video recorder.

24              Those four exhibits were attached to the  
25      government's response previously provided to the defense and



1 I'll just move their admission and provide those to the  
2 Court at this point.

3 THE COURT: A couple of things. First, to the  
4 exhibits themselves, any objections, Mr. Brink?

5 MR. BRINK: No, Your Honor. Thank you.

6 THE COURT: Those exhibits will be admitted.

7 Now, as you no doubt have noted, the fourth of  
8 those, the one search warrant that was signed by a judge in  
9 this district, was signed by me and that means that it is  
10 not appropriate for me to consider the motion to suppress in  
11 connection with that particular search warrant.

12 Accordingly, I will be referring that motion to  
13 one of my colleagues and they will be, whoever that is, will  
14 be issuing a Report and Recommendation with respect to that  
15 motion.

16 Now, it's my understanding that none of the  
17 testimony you anticipate introducing today, Mr. Dunne, goes  
18 specifically to that warrant; is that correct?

19 MR. DUNNE: That's correct, Your Honor.

20 THE COURT: All right. So those four exhibits are  
21 admitted, but just so everybody understands, one of the  
22 other magistrate judges will be considering that probable  
23 cause in connection with that last search warrant.

24 All right. Anything else by way of introduction?

25 MR. DUNNE: Well, the only -- again, so it's clear

1 to the Court, the motion to suppress statements, as the  
2 government viewed the evidence in the case there are three  
3 separate statements and that's put out on pages 8, 9, and 10  
4 of our response.

5 It's post arrest statements that were made in the  
6 Marshal's lockup, which the government has represented it  
7 has no intention of introducing those statements at trial.

8 3(b) concerns statements made by Mr. Knutson at  
9 Sherburne County during an incident that led to an  
10 altercation between Mr. Knutson and several correctional  
11 officers. Obviously those are voluntary statements, not the  
12 product of any interrogation. However, the government is  
13 representing and has represented in those papers that it has  
14 no intention of introducing those statements at this time at  
15 trial.

16 THE COURT: So that leaves --

17 MR. DUNNE: That leaves the jail calls and we do  
18 have a witness for that.

19 THE COURT: All right. Very well. Okay.  
20 Anything further by way of overview?

21 MR. DUNNE: No, Your Honor.

22 THE COURT: Mr. Brink, anything further from you  
23 by way of overview or shall we move to Mr. Dunne's witness?

24 MR. BRINK: We can go ahead.

25 THE COURT: Thank you.

1 MR. DUNNE: Thank you, Your Honor. And I want to  
2 make sure that I pronounce the name correctly, not make her  
3 an heir to the Vlasic pickle. It's Michele Vlasak.

4 THE COURT: All right. Ms. Vlasak, please step  
5 forward. Please raise your right hand.

6 (Witness sworn)

7 THE COURT: Please be seated. There is water up  
8 there if you want to pour yourself a cup.

9 THE WITNESS: Thank you.

10 THE COURT: I will let you get settled in for a  
11 moment. Please state your full name for the record and  
12 please spell your last name.

13 THE WITNESS: It's Michele, that's with one "l,"  
14 Nicole and it's Vlasak and it's V, as in Victor, l-a-s-a-k.

15 THE COURT: Very well. Please go ahead.

16 **(Michele Vlasak)**

17 **DIRECT EXAMINATION**

18 BY MR. DUNNE:

19 Q. How are you currently employed?

20 A. I am currently employed with Sherburne County Sheriff's  
21 Office.

22 THE COURT: I am going to ask you to move forward  
23 and get closer to your microphone. I am having a little  
24 trouble hearing you and I am guessing our court reporter was  
25 as well. Try that now.

1 THE WITNESS: Sherburne County Sheriff's Office.

2 BY MR. DUNNE:

3 Q. Okay. And do you have a title?

4 A. I am an investigator.

5 Q. Okay. And as part -- how long have you been an  
6 investigator for Sherburne County?

7 A. I've been an investigator for three years.

8 Q. And your current station, is that at the jail?

9 A. I'm assigned to the jail, correct.

10 Q. And what are your duties at the jail?

11 A. I assist agencies with cases. I monitor phone calls,  
12 monitor mail, video visitations. I deal with any criminal  
13 activity that occurs in the jail.

14 Q. From performing those duties the last three years at the  
15 Sherburne County Jail, are you familiar with the rules and  
16 regulations of the jail in connection with telephone calls  
17 by inmates?

18 A. Yes.

19 Q. Can you explain what those rules and regulations are to  
20 the Court.

21 A. Inmates' phone calls are subject to being monitored and  
22 recorded unless it is an attorney call and that's  
23 privileged. Those do not get recorded.

24 MR. DUNNE: Your Honor, may I approach the  
25 witness?

1 THE COURT: Yes.

2 BY MR. DUNNE:

3 Q. I want to hand you what's been previously marked for  
4 identification purposes as Government Exhibit 6 and ask you  
5 to take a look at that. What is Government Exhibit 6?

6 A. This is the inmate handbook.

7 Q. And so the record is clear, it is not the entire  
8 handbook, it is excerpts from the handbook that you brought  
9 to me this morning?

10 A. Correct.

11 Q. And is this -- tell me what the purpose of this inmate  
12 handbook, Government Exhibit 6, is. Is that provided to  
13 inmates?

14 A. Yes.

15 Q. In its entirety?

16 A. Yes.

17 Q. When?

18 A. When they come into our facility.

19 MR. DUNNE: Your Honor, the government would offer  
20 Government Exhibit 6.

21 THE COURT: Any objection?

22 MR. BRINK: No objection for the purpose of this  
23 hearing, Your Honor.

24 THE COURT: Understood. Exhibit 6 will be  
25 admitted.

1 BY MR. DUNNE:

2 Q. I want to turn your attention on Government Exhibit 6 to  
3 page 5, which happens to be the third page of that exhibit,  
4 and turn your attention to the third full -- second full  
5 paragraph from the bottom of the sheet that begins, "If your  
6 family...." Do you see that?

7 A. Yes.

8 Q. Could you read the last sentence of that paragraph.

9 A. "Telephone conversations are recorded with the exception  
10 of your calls to your attorney."

11 Q. In addition to these written notifications regarding  
12 inmate telephone calls, are there any other notifications  
13 that are made to inmates concerning the monitoring and  
14 recording of their telephone calls from Sherburne County?

15 A. Yes.

16 Q. And what are those?

17 A. When they make a phone call there is a recording at the  
18 beginning that states that the phone call is subject to  
19 recording and monitoring, and you cannot bypass that.

20 MR. DUNNE: Your Honor, I have nothing further for  
21 this witness. Thank you.

22 THE COURT: Cross examination, Mr. Brink?

23 **CROSS EXAMINATION**

24 BY MR. BRINK:

25 Q. My client tells me, ma'am, that this is not passed out

1 to the inmates, that they have to ask for it if they want to  
2 see it.

3 A. It's given to them during their orientation.

4 Q. To every prisoner?

5 A. To all the inmates. It is also available to them if  
6 they lose it. They can ask the CO if they want another  
7 copy.

8 Q. How many pages is this document?

9 A. The entire document?

10 Q. Yes.

11 A. I don't have it with me. I just have part of it.

12 Q. About?

13 A. Twenty pages.

14 Q. And it's small print, single-spaced?

15 A. Yes.

16 Q. Does anybody explain this stuff to these guys?

17 A. During orientation.

18 Q. When does orientation take place?

19 A. When they're getting booked in.

20 Q. How long does it last?

21 A. I wouldn't know.

22 Q. You don't know?

23 A. I'm not part of that part of it, no.

24 Q. But you believe that it happens?

25 A. Well, I'm aware that it happens.

1 Q. How do you become aware that it happens if you're not  
2 familiar with it?

3 A. Because it's been explained to me.

4 MR. BRINK: Those are all the questions I have.  
5 Thank you.

6 THE COURT: All right. Anything by way of  
7 redirect?

8 MR. DUNNE: Nothing further, Your Honor.

9 THE COURT: All right. Then you may step down.

10 MR. DUNNE: Your Honor, the government rests.

11 THE COURT: All right. And Mr. Brink, did you  
12 have any witnesses to call?

13 MR. BRINK: Yes. Agent Raichert.

14 MR. DUNNE: Well, Your Honor, I'm going to object  
15 to calling Officer Raichert if it's for the purposes of the  
16 Franks hearing.

17 THE COURT: Is this in connection with your  
18 request for a Franks hearing?

19 MR. BRINK: It is, Your Honor. Traditionally we  
20 have to establish -- you have to make a preliminary showing  
21 to get the Franks hearing and traditionally that showing is  
22 made at this motions hearing, and my purpose in calling  
23 Agent Raichert is to establish that preliminary showing that  
24 would entitle us to a Franks hearing.

25 And by way of explanation, this case is a



1 little -- has a little bit different twist on the Franks  
2 issue. Usually it's an allegation that some statement is  
3 intentionally or recklessly incorrect or false in the  
4 application for the search warrant. We do have that in this  
5 case, but the interesting twist in this case is we also have  
6 a failure to investigate, which complicates the matter and  
7 can be a basis for the granting of a Franks hearing.

8 By way of explanation, there is no tie between the  
9 defendant and the house at 890 Arkwright. There were a  
10 couple of pieces of mail found there, but they were  
11 addressed to him at a location in Savage, Minnesota, not at  
12 890 Arkwright.

13 It also turns out that if the police had gone  
14 to the Ramsey County authorities to find out who owned  
15 890 Arkwright, they would have found that it was managed by  
16 a company called Home Haven Homes and we have a lease  
17 agreement that leased it on April 11th of 19 -- of 2017 to a  
18 woman named Kelly Walters.

19 So not only is the defendant not on the lease, the  
20 mail that was found there was addressed to him in Savage,  
21 Minnesota, and all the police had to do to determine the  
22 tenancy was to contact the homeowner and they would have --  
23 with a couple of phone calls they'd have realized that there  
24 was no tie between Mr. Knutson to the tenancy of that  
25 dwelling.

1           There's also some issues around a statement in the  
2           warrant in which Officer Raichert makes the statement to the  
3           effect, quote, My investigation revealed that Todd Knutson  
4           is the tenant of this dwelling. And it is impossible for  
5           his investigation to have revealed that, at least based on  
6           what we know, because the tenant on the lease was this woman  
7           named Kelly Walters.

8           So we have that statement that we claim is false  
9           in which he said that his investigation determined that Todd  
10          Knutson was the tenant and then we have the failure to make  
11          even the most meager attempt to find out who lived there by  
12          calling the Ramsey County authorities.

13          And then we have quotes by Agent Raichert or  
14          Officer Raichert regarding a CD, which I'm given to  
15          understand is a cooperating defendant. And a cooperating  
16          defendant by definition is working -- trying to work his way  
17          out of his own problem as a cooperator and because he's a  
18          defendant, or she.

19          The other informant is listed as a CI, which I  
20          assume means confidential informant, who frequently are  
21          working their way out of problems and anxious to please the  
22          police.

23          And as to both of these individuals there is no  
24          statement of previous reliability, no statement to evaluate  
25          the credibility of their information, the information being

1 that Todd Knutson was selling methamphetamine out of this  
2 house. But there is nothing going to their previous  
3 reliability, historical reliability, or the credibility of  
4 the information that they were supplying.

5 Each was shown a single photograph and, according  
6 to Agent Raichert, identified the photograph as being that  
7 of Mr. Knutson. That's obviously a problem because a single  
8 photograph is obviously suggestive and gives rise to a  
9 substantial likelihood of misidentification, as the Supreme  
10 Court has held many times.

11 So that in a nutshell is what the situation is and  
12 my intent would be to lay that foundation by asking Officer  
13 Raichert if he indeed made the statement that Todd Knutson  
14 was the tenant and if he did any investigation at all to  
15 find out who lived in this house.

16 And the final reason this is important, Your  
17 Honor, is that the probable cause in the search warrant  
18 application is not directed at the real estate, it's  
19 directed at Mr. Knutson.

20 And it is his nexus to the property -- if any  
21 probable cause is to be found, it would have to be found  
22 because of his nexus to the property. If he had no nexus to  
23 the property, there's no reason -- if he didn't have a nexus  
24 to the property, there's no reason to search the property.

25 So that, briefly, is where I want to go.

1 THE COURT: All right. I appreciate the proffer.  
2 Let me ask Mr. Dunne to respond.

3 MR. DUNNE: Your Honor, I appreciate Mr. Brink's  
4 arguments. However, he has conflated not only facts, but  
5 he's also conflated the law.

6 If you look at Delaware v. Franks, the Supreme  
7 Court has required that the defendant must show that the  
8 affiant on the warrant used a deliberate falsehood or showed  
9 reckless disregard for the truth. That's the burden that  
10 must be shown in order to get a Franks hearing.

11 But it goes further. The Supreme Court said if  
12 you take the offending statement out and the remainder of  
13 the averments in the affidavit are sufficient to establish  
14 probable cause, then you don't get a Franks hearing. That's  
15 what the Supreme Court has said. There's nothing about a  
16 failure to investigate. It's a deliberate falsehood on the  
17 part of the affiant.

18 Now, the statement here that Mr. Brink contends is  
19 false is: "Through the investigation I was able to identify  
20 the tenant of 890 Arkwright as Todd Seaver Knutson." That's  
21 the offending statement.

22 Now, if you look in the affidavit, that statement  
23 comes in a paragraph where the affiant then goes on to  
24 explain to the issuing judge how he identified Todd Seaver  
25 Knutson as the tenant of 890 Arkwright. It's hard to

1 conceive of someone deliberately misleading a judge when the  
2 affidavit itself goes on to explain the steps that were  
3 taken.

4 Mr. Brink also conflates the word "tenant" with  
5 owner or named leaseholder. Tenant -- the common vernacular  
6 of "tenant" from *Webster's Dictionary* is dweller, occupant,  
7 inhabitant temporarily of property.

8 That's exactly what Officer Raichert said in the  
9 affidavit and it's exactly what his investigation showed.  
10 He talked to two separate people, a confidential informant  
11 and a cooperating defendant in an unrelated case, and they  
12 both independently and separately said they bought  
13 quantities of methamphetamine from Todd Seaver Knutson at  
14 890 Arkwright. They both independently and separately said  
15 they were there and observed firearms in his home. They  
16 observed surveillance cameras both inside and outside his  
17 home. They both independently and separately said there are  
18 stolen Dodge Charger parts in the garage of his home.

19 And then within 24 hours of obtaining the warrant,  
20 Officer Raichert sent in the informant into 890 Arkwright  
21 Street and immediately upon exiting that address advised the  
22 officer that Todd Seaver Knutson let the informant into the  
23 residence. That is the basis for his statement "Through the  
24 investigation I was able to identify the tenant of  
25 890 Arkwright as Todd Seaver Knutson." It's supported by

1 everything else in the warrant. Now, that averment,  
2 factually correct by Officer Raichert, was also corroborated  
3 by evidence the officers obtained following the execution of  
4 the search warrant.

5 And I must say this Kelly Walter thing is  
6 interesting because I suppose that what Mr. Brink is saying  
7 is that the failure to call the owner, to look at the lease  
8 and to find out who the named leaseholder is a failure to  
9 investigate. Of course, nowhere in the affidavit does it  
10 say owner or named leaseholder. It says tenant, dweller,  
11 occupant, inhabitant.

12 Our investigation that I tasked the FBI to do  
13 after the indictment disclosed there is no Kelly Walter.  
14 It's a fake ID. It's a fake pay stub. It's a fake check.  
15 There is no named leaseholder of Kelly Walter. It's all  
16 bogus. The tenant is Todd Seaver Knutson, and that's  
17 exactly what Officer Raichert said.

18 It's the position of the United States that  
19 Mr. Brink has not met his burden. And even if you take that  
20 one sentence out, there's ample probable cause to support  
21 the issuance of the search warrant and that's set forth in  
22 page 3 of the government's response to the request for a  
23 Franks hearing. So based upon all of those matters, the  
24 government opposes the motion.

25 THE COURT: All right.

1 MR. BRINK: May I make two observations, Your  
2 Honor?

3 THE COURT: You may, of course. Please come to  
4 the podium to do it, though.

5 MR. BRINK: With respect to Kelly Walters'  
6 existence or lack of it, if that were the case the police  
7 should have ascertained that and informed the issuing judge  
8 that that was part of the mix in the question whether  
9 probable cause exists to support a search warrant. They  
10 should have said we called the county authorities. They  
11 said this Kelly Walters was the tenant or the occupant or  
12 whatever you want to call her. We checked it out. It turns  
13 out she's not a legitimate tenant. And then the judge would  
14 have had the whole picture rather than just the part that  
15 the police chose to show to him.

16 And second, the second point I'd like to make,  
17 Your Honor, is I think it's significant that they didn't  
18 make any controlled buys. If they've got these informants  
19 going in there, why didn't they come out with some  
20 methamphetamine? They made the claim that Mr. Knutson was  
21 selling meth out of that house, but they didn't come out  
22 with any.

23 THE COURT: Thank you.

24 MR. DUNNE: Your Honor, may I just briefly,  
25 briefly respond? I'm sorry.

1 THE COURT: Briefly, briefly respond.

2 MR. DUNNE: I'm sorry.

3 THE COURT: Come to the podium.

4 MR. DUNNE: Kelly Walters and then controlled  
5 buys.

6 The Kelly Walters part, again, I hope -- maybe I  
7 misspoke. That was not learned by the officers until post  
8 indictment. Okay? And that is not what the test for Franks  
9 is. It's not what the officers subsequently found; if you  
10 can add it to an affidavit, what impact does that have.  
11 It's whether or not the statements in the affidavit were  
12 deliberately false or showed a reckless disregard for the  
13 truth. And it doesn't. In fact, that investigation would  
14 have added to the probable cause.

15 But that's not the test for Franks. Franks is  
16 just whether that statement in and of itself is deliberately  
17 false or showed reckless disregard for the truth; or if  
18 excised, is the remaining averments sufficient to show  
19 probable cause. That's what the Supreme Court has guided us  
20 for analysis under Franks.

21 And secondly, the controlled buys. I guess that  
22 goes to probable cause, but that's not what was in the  
23 warrant. What the judge has to look at for issuing a  
24 warrant is the probable cause that is stated in the  
25 affidavit, not what could or could not have been done to add



1 or subtract from it. It's whether there are false  
2 statements and whether there is sufficient probable cause.

3 Whether or not there's sufficient probable cause  
4 is traditionally a four-corners review of that affidavit,  
5 and that's what we're submitting needs to be done in this  
6 case for all of the warrants submitted, and whether or not  
7 the statement in isolation or in conjunction with the  
8 totality of circumstances is false. It is not.

9 He has not met his burden and, again, the  
10 government respectfully submits that that motion should be  
11 denied.

12 THE COURT: Thank you. With respect to that part  
13 of Docket No. 45, defendant's motion, to the extent that it  
14 asks for an evidentiary Franks hearing, I am denying that  
15 motion from the bench:

16 Under Franks vs. Delaware a defendant is entitled  
17 to an evidentiary hearing if he or she makes a substantial  
18 preliminary showing that a false statement knowingly and  
19 intentionally or with reckless disregard for the truth was  
20 included in the warrant affidavit and if the statement is  
21 necessary to the finding of probable cause.

22 To make that substantial preliminary showing the  
23 defendant has to point out specifically the portion of the  
24 affidavit claimed to be false, and that has been  
25 specifically pointed out here.

1 But that has to be accompanied by a statement of  
2 supporting reasons and an allegation standing alone is  
3 insufficient to make what's described as a difficult  
4 preliminary showing by the Eighth Circuit.

5 Here the allegation is that the government  
6 included a material false statement in the affidavit because  
7 the officer said, "Through the investigation I was able to  
8 identify the tenant of XXXX Arkwright Street as Todd Seaver  
9 Knutson."

10 But I am concluding that the defendant has failed  
11 to make -- has failed to meet the burden of making that  
12 showing for a couple of reasons.

13 First, as Mr. Dunne argued and as I conclude from  
14 my review of the affidavit as well, the investigation done  
15 is described there and the affiant describes information  
16 received both from a corroborating defendant and from a  
17 confidential informant, separately gained, separately  
18 obtained, that although they may not identify Mr. Knutson as  
19 the named renter or named leaseholder of that home, it gave  
20 the officer plenty of reason to believe and through the  
21 officer the issuing court plenty of reason to understand  
22 that Mr. Knutson was connected with the premises, that he  
23 was often found in the premises, that he was transacting  
24 some business from the premises.

25 Whether he was, by some formalistic definition,

1 the leaseholder of record is not the point. The point is  
2 that both of these individuals found him there and that  
3 there's nothing here that tells me, even in the offer of  
4 proof, that it was knowingly false or recklessly false or  
5 incorrect for the officer to conclude and to state in the  
6 affidavit that Mr. Knutson was the tenant of the premises.

7 Furthermore, even if that strictly speaking was  
8 incorrect, the connection to the premises is what counts  
9 here. And so even if it was incorrect for the officer to  
10 conclude from the activities described that Mr. Knutson  
11 ought to be described as a tenant as opposed to someone who  
12 was there, what counts in the affidavit is the activity  
13 being described as taking place on those premises in which  
14 Mr. Knutson was playing a part.

15 And so I also conclude that the specific  
16 description of Mr. Knutson as the tenant of the premises was  
17 not necessary to a showing of probable cause and so for  
18 those reasons I am denying the motion for a Franks hearing  
19 from the bench.

20 The remainder of the motions to suppress I will,  
21 as I said, take under advisement once we have briefing on  
22 those motions and that's the next thing we need to get to in  
23 this hearing.

24 MR. BRINK: Excuse me, Your Honor.

25 THE COURT: Yes, sir.

1 MR. BRINK: Before we get to briefing, I have one  
2 other witness.

3 THE COURT: All right. And in what connection?

4 MR. BRINK: Very brief on the issue of the jail  
5 telephone calls.

6 THE COURT: All right. If you've got a witness in  
7 connection with the jail telephone calls, is this something  
8 that you've discussed with -- you want to call Mr. Knutson  
9 himself?

10 MR. BRINK: Yes.

11 THE COURT: All right.

12 MR. BRINK: Under the protection of Simmons  
13 against the United States, which holds that if a defendant  
14 gives up his Fifth Amendment right to remain silent in order  
15 to secure another right secured to him by the Constitution,  
16 nothing he says here can be used against him substantively  
17 at trial.

18 THE COURT: Well, I will want to hear from  
19 Mr. Dunne if he's got an alternate view about the protection  
20 of Simmons. Mr. Dunne, do you want to be heard at this  
21 point?

22 MR. DUNNE: No, Your Honor. I have no objection  
23 to Mr. Knutson testifying.

24 THE COURT: All right. Very well. So I am going  
25 to have you raise your right hand, Mr. Knutson. Why don't

1       you stand for this.

2               (Defendant sworn)

3               THE COURT: Please be seated. State your full  
4       name, please, making sure you're speaking into the  
5       microphone and spell your last name.

6               THE WITNESS: Todd Seaver Knutson, K-n-u-t-s-o-n.

7               THE COURT: Mr. Brink, go ahead.

8               MR. BRINK: Thank you.

9                       **(Todd Knutson)**

10                      **DIRECT EXAMINATION**

11       BY MR. BRINK:

12       Q. Mr. Knutson, you're the defendant in this matter,  
13       correct?

14       A. Yes.

15       Q. I'm showing you Government's Exhibit 6, which is an  
16       excerpt -- it's a cover and an excerpt from the Sherburne  
17       County Jail inmate handbook. Have I described that  
18       accurately?

19       A. Yes.

20       Q. And it says on page 5, it gives some instructions for  
21       prisoners to make --

22               THE COURT: Actually, I'm going to ask you -- why  
23       don't you use my copy so that he can follow along, but I  
24       would prefer that you question from the podium so that we  
25       make sure we've got a good recording into the microphones.

1 BY MR. BRINK:

2 Q. Just read that last sentence of that paragraph.

3 THE COURT: If you would like to use my copy --

4 MR. BRINK: That's okay.

5 THE COURT: -- so you've got something to follow  
6 along?

7 MR. BRINK: Thank you.

8 THE WITNESS: Just the last sentence?

9 BY MR. BRINK:

10 Q. Yeah.

11 A. "Telephone conversations are recorded with the exception  
12 of your calls to your attorney."

13 Q. Did you receive this inmate handbook?

14 A. No.

15 Q. Have you ever seen it before today?

16 A. No.

17 Q. So you did not have that information in this form of  
18 Exhibit 6?

19 A. No. When you come into the intake, the only thing they  
20 do is they play a video. They've got a video about shower  
21 policies, lock-in policies, everything else. The handbook  
22 isn't handed out anymore. Everything is on the video. I  
23 never even watched the video. When I came in I was trying  
24 to get a phone call -- Officers, let me make a phone call --  
25 let alone got a handbook on the situation.

1 MR. BRINK: Those are the questions I have, Your  
2 Honor. Thank you.

3 THE COURT: Mr. Dunne.

4 MR. DUNNE: Thank you, Your Honor.

5 **CROSS EXAMINATION**

6 BY MR. DUNNE:

7 Q. Mr. Knutson, before each call that you made at the jail  
8 isn't there a recording advising you that the call is  
9 subject to monitoring and recording?

10 A. I mean, I believe so. I listen to the part where it  
11 tells me how much money I got and I just kind of -- I'm  
12 stressed out in there. I mean, I may have heard something  
13 on there. I don't really listen to it. I dial my  
14 information in and I wait a minute. It takes a minute for  
15 the calls to go through.

16 Q. Are you done?

17 A. Yeah. You asked me a question. I was just responding,  
18 sir.

19 Q. I was just asking if you are done testifying, sir. Are  
20 you done testifying?

21 A. Okay.

22 Q. Are you?

23 A. Are you done with the questions? Yes.

24 Q. No, I'm not done with the questions.

25 THE COURT: Let me intervene. I think the

1 question was: Did you finish what you wanted to say in  
2 response to Mr. Dunne's question just now?

3 THE WITNESS: Yes, ma'am.

4 THE COURT: All right. Then Mr. Dunne.

5 BY MR. DUNNE:

6 Q. Mr. Knutson, let me repeat the question. Isn't it true  
7 that before each telephone call that you made or received at  
8 the Sherburne County Jail there was a recording advising you  
9 that your calls are subject to monitoring and recording?

10 A. I didn't pay any attention to it and I don't receive  
11 calls.

12 Q. So you don't know; is that what your testimony is?

13 A. Yes, sir.

14 Q. Okay. Isn't it true that in one of your calls you told  
15 the person on the other end, and I quote, I can't talk about  
16 it over the jail phones because they're recorded?

17 A. Yes. I was just talking about, you know, usually jail  
18 phones are recorded, but Sherburne County I wasn't told,  
19 didn't get any handbook.

20 Q. So you don't deny making that statement in one of your  
21 calls?

22 A. Yes, I don't deny it.

23 Q. And what you're saying is you didn't listen in your  
24 other calls whether they advised you that your call was  
25 subject to being monitored and recorded?



1 A. You don't understand the stress level one goes through  
2 once you put your phone number in. I mean, you are kind of  
3 sitting there stressed out thinking about the world caving  
4 in on you. You don't pay attention to some things.

5 Q. Is it true that your testimony was you didn't listen to  
6 the part of the call that advised you that your calls are  
7 subject to monitoring and recording?

8 A. Yes.

9 MR. DUNNE: Nothing further, Your Honor.

10 THE COURT: All right. Any redirect, Mr. Brink?

11 MR. BRINK: No, Your Honor. Thank you.

12 THE COURT: Mr. Knutson, you can step down.

13 THE WITNESS: Thank you, ma'am.

14 THE COURT: Do you have any other witnesses to  
15 call?

16 MR. BRINK: I do not, Your Honor. We rest.

17 THE COURT: Mr. Dunne, anything further?

18 MR. DUNNE: No, Your Honor. The government rests.

19 THE COURT: Then let's turn next to the question  
20 of briefing. Mr. Brink, I assume you intend to order a  
21 transcript of the hearing?

22 MR. BRINK: Yes, Your Honor, I do.

23 THE COURT: And how -- are you going to order it,  
24 do you know, on a 7- or 14-day basis? I am just trying to  
25 set how long you will need beyond today's date for your --

1 MR. BRINK: Could you meet either of those or is  
2 14 easier?

3 COURT REPORTER: Yes, 14.

4 THE COURT: I heard the court reporter say 14  
5 would be easier.

6 MR. BRINK: I will order it on a 14-day basis.

7 THE COURT: So how long after you get the  
8 transcript do you need to submit your brief?

9 MR. BRINK: One week.

10 THE COURT: All right. So today is the 21st, so  
11 14 days gets us to October 5th. So your brief will be due  
12 on October 12th.

13 And Mr. Dunne, how long after October 12th do you  
14 need to do yours?

15 MR. DUNNE: Well, Your Honor, I don't believe I am  
16 going to submit any more briefing to the Court. I had to  
17 absent myself from a family vacation to get the responses in  
18 as they are, but what I would like to do is look at what  
19 Mr. Brink says in his papers to see if I need to respond.  
20 So could I have a week?

21 THE COURT: Absolutely. So if you were going to  
22 file a response -- why don't we just have you let the Court  
23 know either way.

24 MR. DUNNE: I will, Your Honor.

25 THE COURT: You will either file a response or you

1 will advise the Court that you intend not to file a response  
2 by October 19th.

3 MR. DUNNE: I will, Your Honor.

4 THE COURT: And as of October 19th I will take the  
5 motions under advisement and I will get a Report and  
6 Recommendation out in due course.

7 Is there anything further we need to do with  
8 respect to Mr. Knutson's case today? Mr. Dunne?

9 MR. DUNNE: Not on behalf of the United States,  
10 Your Honor.

11 THE COURT: Mr. Brink?

12 MR. BRINK: Not for Mr. Knutson, Your Honor.  
13 Thank you.

14 THE COURT: Thank you very much. We will be in  
15 recess.

16 (Court adjourned at 11:15 a.m.)

17 \* \* \*

18  
19  
20 I, Lori A. Simpson, certify that the foregoing is a  
21 correct transcript from the record of proceedings in the  
22 above-entitled matter.

23  
24 Certified by: s/ Lori A. Simpson

25 Lori A. Simpson, RMR-CRR